

Application No. **10/765,511**
Response Dated July 15, 2010
Reply to Office Action of 03/15/2010

PATENT

Agent's Docket No. **2173-170**

Remarks:

Claims 1 to 10, 12, and 13 are pending in the application.

Claims 1 to 10, 12, and 13 stand rejected.

No amendments are being submitted herein.

Arguments:

Double patenting objection

Claims 1 to 10, 12 and 13 stand rejected on the ground of non-statutory double patenting over U.S. Patent 7,222,340 ('340) in view of **Birum** and **Yu**.

Applicant submits herewith a terminal disclaimer in compliance with 37 CFR 1.321 or 1.321 (d). Accordingly it is believed that this objection is traversed.

Obviousness rejection under 35 U.S.C. §103

Claims 1, 3 to 10 and 12 stand rejected under 35 U.S.C. §103(a) as unpatentable over **Birum** in view of **Yu**. Applicant respectfully disagrees having regard to the following discussion.

In the FOA at page 13, the Examiner states that "sending said software identifier along with an identifier (emphasis added) is disclosed by **Birum** '[0046, "a client can change a file, such as a configuration file and cause that file to be sent back to a server." (Configuration file that consists of identifiers)]...to said network [Figure 1, "140"]'". Applicant finds the latter part of the Examiner's reasoning to be unclear as to whether the Examiner is equating the cited portion of **Birum** with the claimed software identifier or the claimed identifier. For clarity, the applicant assumes that the Examiner is equating **Birum's** "configuration file that consists of identifiers" with the software identifier in the subject claim and not the identifier also found in the same claim; otherwise it would contradict the Examiner's reasoning later in the FOA where it is stated that "**Birum** does not explicitly teach...an identifier....".

Proceeding on the premise that the Examiner is equating the “configuration file that consists of identifiers” with software identifier, this is contradictory and inconsistent with the meanings applied to the term software identifiers as interpreted by the Examiner with respect to occurrences earlier in the claim. For example at page 12 and 13 of the OA the Examiner equates software identifier with “the list of resources in a new version” taught in **Birum**.

Thus the sending of configuration file described at [para. 0046] of **Birum** is not, as alleged by the Examiner, equivalent to “sending a software identifier” if the Examiner’s reasoning earlier in the claim were to be followed. Furthermore, **Birum** contemplates sending an entire file rather than a software identifier as defined in the present claims. Furthermore, and as acknowledged by the Examiner, **Birum** does not teach the limitation of an “identifier indicating a particular carrier company associated with the wireless device”.

Accordingly, while the Applicant agrees **Birum** does not explicitly teach “... an identifier indicating a particular carrier company associated with the wireless mobile device...”, **Birum** also does not teach sending the software identifier.

The Examiner has introduced **Yu** as teaching the identifier indicating a particular carrier. As discussed in the Applicant’s previous response **Yu** describes a mobile station sending only mobile station identifiers to the network. At the BSC **Yu** uses the mobile identifier in a look-up table to find a carrier company. The Examiner argues that this look-up using the mobile identifier in the BSC is equivalent to the step of sending... an identifier indicating a particular carrier company” by the device. Applicant contends that this is improper since this moves the claimed step, which is performed at the mobile device to be performed at the BSC. The present claims do not recite this step being performed at the BSC. Accordingly **Yu** does not teach the feature of sending an identifier indicating a particular carrier. Furthermore if this or other steps

are performed at the BSC then one of the benefits of the subject application would not be

realized i.e. changes to the non volatile(NV) file system made outside the context of Dynamic NV management do not unexpectedly reset in subsequent time periods.

Thus even when combined with **Yu, Birum** and **Yu** do not teach all the features of the subject independent claims 1, 10 and 12.

Dependent claims 2 to 9 and 13 variously depend directly and/or indirectly from independent claims 1 and 12, and therefore incorporate all respective limitations of independent claims 1, 10 and 12.

Therefore, applicant respectfully submits that a prima facie case of obviousness has not been established in respect of independent claims 1, 10 and 12 by failure to produce prior art teaching of each and every element claimed and because it would not have been obvious to one of ordinary skill in the art to combine the cited references.

Dependent claims 3 to 9 variously depend directly and/or indirectly from independent claim 1, and therefore incorporate all respective limitations of independent claim 1. Applicant respectfully submits that a case of obviousness has not been established in respect of dependent claims 3 to 9 for the above reasons.

b) Claims 2 and 13 stand rejected under 35 U.S.C. §103(a) over Birum in view of Yu and Moore. Applicant respectfully disagrees.

Dependent claims 2 and 13 respectively depend directly from independent claims 1 and 12 and therefore incorporate all respective limitations of independent claims 1 and 12. The articulated rejection relies on the teachings of Birum and Yu. Moore does not cure the

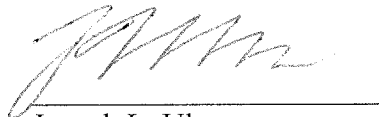
deficiency in Birum and Yu with respect to "sending ... an identifier indicating a particular carrier company associated with the wireless mobile device to the network".

Applicant respectfully submits that a case of obviousness in respect of dependent claims 2 and 13 has not been established for the above reasons.

Applicant respectfully submits that the above arguments raise questions regarding the establishment of a case of unpatentability.

Reconsideration and allowance are respectfully requested.

Respectfully submitted,



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